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8 SHARAE MASSEY,
9 Plaintiff,
10 v.
11 STAR NURSING, INC.,
12 Defendant.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case No. [5:21-cv-01482-EJD](#)

ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND SETTING DEADLINES FOR NOTICE, OBJECTION, EXCLUSION, AND FINAL FAIRNESS HEARING

Re: Dkt. Nos. 35, 38

13 On October 20, 2022, the Court held a hearing on the motion of Plaintiff Massey
14 (“Plaintiff”) individually and on behalf of the proposed class and collective for conditional
15 certification of a settlement class in this action; preliminary approval of the parties’ proposed
16 settlement; approval of the Class Notice Packet; appointing Class Representatives, Class Counsel
17 and the proposed Settlement Administrator; and setting a date for the hearing on final approval of
18 the settlement. *See* Dkt. Nos. 35, 38. The motion is unopposed by Defendant Star Nursing, LLC
19 (“Star Nursing”).

20 Having considered the motion briefing, the arguments of counsel, the relevant law, the
21 terms of the settlement agreement and the class notice, as well as the record in this case, and based
22 on the reasons and terms set forth herein, the Court **GRANTS** the parties’ motion for preliminary
23 approval of class action settlement.

24 **I. BACKGROUND**

25 Plaintiff filed the putative class action complaint on March 2, 2021 against Star Nursing, a
26 staffing company that employs hourly healthcare workers (“Travelers”) on short-term travel

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1 assignments at healthcare facilities throughout California. Plaintiff alleges that Travelers were
2 underpaid overtime because Star Nursing excluded the value of hourly stipends from the regular
3 rate when calculating overtime rates of pay.

4 Plaintiff's Second Amended Complaint ("SAC") asserts claims for (1) unpaid overtime
5 wages under California Labor Code §§ 510 and 1194; (2) unfair business practices under California
6 Business & Professions Code § 17200 *et seq.*; (3) waiting time penalties under California Labor
7 Code § 203; (4) civil penalties under the California Labor Code Private Attorney General Act
8 ("PAGA"), Labor Code § 2698, *et seq.*; and (4) violation of the federal Fair Labor Standards Act
9 ("FLSA"), 29 U.S.C. § 201, *et. seq.* See SAC, Dkt. No. 24.

10 The parties reached a settlement prior to class certification with the assistance of the
11 Honorable Suzanne Segal.

12 **B. Terms of the Settlement Agreement**

13 Under the terms of the Settlement Agreement, Star Nursing will pay \$700,000.00 into a
14 common settlement fund, without admitting liability. This amount includes attorneys' fees and
15 litigation costs, the cost of class notice and settlement administration, payment of civil penalties
16 pursuant to PAGA, and the class representative's service award. It excludes Star Nursing's share of
17 payroll taxes on the portion of the settlement payments deemed wages, which Star Nursing will pay
18 separately.

19 **I. Attorneys' Fees and Costs**

20 Under the Settlement Agreement, Plaintiff's counsel agreed that attorneys' fees shall not
21 exceed twenty-five percent (25%) of the gross settlement amount, or \$175,000.00, and no more
22 than \$15,000.00 in litigation costs. The common settlement fund also includes a provision for
23 \$20,000.00 in settlement administration costs; and up to \$5,000.00 to be paid to the class
24 representative Plaintiff Massey as an incentive award in exchange for a general release of all claims
25 against Star Nursing.

1 **2. Class Relief**

2 After deductions from the common fund for fees, costs, the PAGA payment, and service
3 incentive awards, approximately \$447,500.00 will remain to be distributed among the participating
4 class members. Dkt. No. 35-6. Class members will be paid pro rata. To calculate each class
5 members' settlement share, the Settlement Agreement provides that:

6 The Net Settlement Amount will first be divided by the total number
7 of weeks worked, in aggregate, by the Participating Class Members to
8 determine the monetary value of each workweek. Each Participating
9 Class Member's Settlement Share will then be calculated by
10 multiplying that individual's number of weeks worked within the
11 Settlement Class Period by the monetary value of each workweek.

12 Dkt. No. 35-4 at 7. Counsel estimates that dividing the remaining amount across the four hundred
13 and twenty-five (425) class members (assuming that each class member returns a written consent
14 via a FLSA Opt-In Form to join the FLSA portion of the settlement) yields an average recovery of
15 approximately \$1,075.00 per class member. The Settlement Agreement provides that no amount
16 will revert to Star Nursing.

17 **3. Settlement Administration Fees and Costs**

18 The fees and costs associated with retaining a third-party administrator to administer the
19 terms of the settlement will be deducted from the gross settlement. The Settlement Agreement
20 states that settlement administration expenses shall not exceed \$20,000.00.

21 **4. PAGA Payment to the LWDA**

22 The Settlement Agreement provides that \$50,000.00 from the gross settlement amount is
23 allocated to the resolution of claims asserted under the California Labor Code Private Attorneys
24 General Act of 2004, California Labor Code §§ 2698, *et seq.* ("PAGA"). Of this \$50,000.00 civil
penalty payment, seventy-five percent (75%), or \$37,500.00, is payable to the Labor & Workforce
Development Agency ("LWDA") and the remaining twenty-five percent (25%), or \$12,500.00, will
be distributed to participating class members as part of the net settlement amount.

25 **5. Unclaimed Settlement Share Checks**

26 The Settlement Agreement also provides that when checks mailed to participating class
27 members are not redeemed or deposited within one hundred and eighty (180) days from the date of
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1 issuance, the Settlement Administrator will deposit the amount of any unclaimed checks with the
2 Court's Unclaimed Funds Registry in the class member's name.

3 **II. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

4 **A. Legal Standard**

5 A court may approve a proposed class action settlement of a certified class only "after a
6 hearing and on finding that it is fair, reasonable, and adequate," and that it meets the requirements
7 for class certification. Fed. R. Civ. P. 23(e)(2). In reviewing the proposed settlement, a court need
8 not address whether the settlement is ideal or the best outcome, but only whether the settlement is
9 fair, free of collusion, and consistent with plaintiff's fiduciary obligations to the class. *See Hanlon v.*
10 *Chrysler Corp.*, 150 F.3d at 1027. The *Hanlon* court identified the following factors relevant to
11 assessing a settlement proposal: (1) the strength of the plaintiff's case; (2) the risk, expense,
12 complexity, and likely duration of further litigation; (3) the risk of maintaining class action status
13 throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and
14 the stage of the proceeding; (6) the experience and views of counsel; (7) the presence of a
15 government participant; and (8) the reaction of class members to the proposed settlement. *Id.* at
16 1026 (citation omitted); *see also Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir.
17 2004).

18 Settlements that occur before formal class certification also "require a higher standard of
19 fairness." *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000). In reviewing such
20 settlements, in addition to considering the above factors, a court also must ensure that "the
21 settlement is not the product of collusion among the negotiating parties." *In re Bluetooth Headset*
22 *Prods. Liab. Litig.*, 654 F.3d 935, 946-47 (9th Cir. 2011).

23 **B. Class Definition and Basis for Conditional Certification**

24 The Settlement Agreement defines the class as:

25 All non-exempt hourly employees employed by Star Nursing in
26 California who, at any time from March 2, 2017 through the date the
27 Court enters an Order granting preliminary approval of the Settlement,
worked one or more workweeks in which they were paid overtime and
received a stipend.

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1 (“the Settlement Class”). Dkt. No. 35-4 at 1. The proposed class is substantively the same as
2 alleged in the Second Amended Complaint. *See* Dkt. No. 24.

3 The Court finds that, for purposes of settlement, Plaintiff has satisfied the requirements of
4 Rule 23(a) as well as the requirements for certification under one or more subsections of Rule
5 23(b). With respect to numerosity under Rule 23(a)(1), Class Counsel indicates that joinder of all
6 members is particularly impracticable under these circumstances because the Settlement Class is
7 composed of approximately four hundred and twenty-five (425) travel nurses who are working in
8 various states across the country at any given time.

9 The Settlement Class also satisfies the commonality requirement. Rule 23(a)(2)
10 commonality requires “questions of fact or law common to the class,” though all questions of fact
11 and law need not be in common. *Hanlon*, 150 F.3d at 1026. The theory of liability in this action—
12 whether the hourly “stipend” payments were unlawfully excluded from the “regular rate” when
13 calculating overtime stipend payments—is common to all class members.

14 Rule 23(a)(3) requires that the plaintiff show that “the claims or defenses of the
15 representative parties are typical of the claims or defenses of the class.” Plaintiff and members of
16 the Settlement Class are all hourly traveling healthcare workers who were employed by Star
17 Nursing on short-term travel assignments at healthcare facilities throughout California. Plaintiff’s
18 overtime, unlawful business practices, waiting time, and PAGA claims hinge on the common issue
19 of whether Star Nursing’s policy of excluding “stipends” from the calculation of overtime rates
20 violates California law, making Plaintiff Massey’s claims typical of class members.

21 With respect to Rule 23(a)(4), the Court finds the representative parties and class counsel
22 have fairly and adequately represented the interests of the Class. No conflicts of interest appear as
23 between Plaintiff and the members of the Settlement Class. Class Counsel have demonstrated that
24 they are experienced in wage and hour class actions and have been appointed as lead counsel in
25 numerous other wage and hour cases both in federal and state courts throughout California. *See*
26 Hayes Decl., Dkt. No. 35-3 ¶ 5. Accordingly, Class Counsel is adequate to represent the Settlement

1 Class as well.

2 The Settlement Class further satisfies Rule 23(b)(3) in that common issues predominate
3 where claims of the class “will prevail or fail in unison,” and “a class action is superior to other
4 available methods for fairly and efficiently adjudicating” the claims here. Because all the claims
5 arise from the common question of the legality of Star Nursing’s policy of excluding “stipend”
6 payments that are based on hours worked from the “regular” rate, each class member’s claim either
7 survives or fails in unison. Accordingly, “[t]his case presents the classic case for treatment as a class
8 action: that is, the commonality linking the class members is the dispositive question in the lawsuit.”
9 *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1029–30 (9th Cir. 2012).

10 Based on the foregoing, the proposed class is conditionally certified pursuant to Rule 23(c).

11 **C. Settlement Agreement Appears Fair and Reasonable**

12 The Settlement Agreement (*see* Dkt. No. 35-4) meets the requirements for FLSA
13 certification and is granted preliminary approval pursuant to Rule 23(e)(2). Based upon the
14 information before the Court, the Settlement Agreement falls within the range of possible approval
15 as fair, adequate and reasonable, and there is a sufficient basis for notifying the Class and for
16 setting a Fairness and Final Approval Hearing.

17 As to the *Hanlon* factors, the Court finds that they indicate the settlement here is fair and
18 reasonable. Proceeding to trial would have been costly; recovery was not guaranteed; and there
19 was the possibility of protracted appeals. If Plaintiff prevailed, the damage analysis conducted by
20 Plaintiff projected a maximum recovery after trial was \$1,645,260.00, including \$841,500.00 in
21 unpaid overtime, up to \$725,760.00 in waiting time penalties, and up to \$78,000.00 in PAGA
22 penalties. However, Star Nursing disclosed that they do not have the financial resources to
23 withstand judgment for the amount of the maximum projected damages. Memo. of Points &
24 Authorities in Supp. of Mot. for Prelim. Approval of Class Action Settlement (“Memo.”), Dkt. No.
25 35-1 at 4. Plaintiff hired a forensic accounting expert to review Star Nursing’s financials to
26 confirm this representation. Hayes Decl. ¶¶ 15-16. With the assistance of the expert, Plaintiff

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1 determined the ability of Star Nursing to satisfy a judgment. Plaintiff's counsel concluded that
2 settlement was justified given the risks on the merits and given that proceeding with litigation
3 through trial presented a serious risk of an unsatisfied judgment. Accordingly, the parties reached
4 an agreement on a settlement amount of \$700,000 which represents roughly eighty-three percent
5 (83%) of the maximum potential recovery for unpaid overtime and approximately forty-two
6 percent (42%) of the maximum potential recovery when waiting time and PAGA penalties are
7 included.

8 The settlement occurred only after discovery and investigation, including written discovery,
9 interrogatories, and requests for admissions. Plaintiff obtained production of all of Star Nursing's
10 policies and procedures regarding paying "stipends" and calculating overtime and class wide
11 payroll records necessary to calculate the alleged unpaid overtime. The parties began mediation on
12 November 1, 2021 and executed a settlement agreement approximately three months later with the
13 assistance of the Honorable Suzanne Segal, a retired federal magistrate judge. Furthermore,
14 Counsel for both parties are highly experienced. The record does not indicate any collusion or self-
15 dealing. *See In re Bluetooth*, 654 F.3d at 946-47.

16 Moreover, the Settlement Agreement appears to have been the product of arm's length and
17 informed negotiations. The relief provided for the Class appears to be adequate, taking into account:

- 18 (i) the costs, risks, and delay of trial and appeal;
- 19 (ii) the effectiveness of any proposed method of distributing relief to the class, including the
method of processing class-member claims;
- 20 (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
- 21 (iv) any agreements required to be identified under Rule 23(e)(3).

23 The Court also finds that the Settlement Agreement appears to treat class members
24 equitably relative to each other.

25 Finally, the requirement for certification of a Fair Labor Standards Act ("FLSA") collective
26 is also met because all the class members are "alike with regard to some material aspect of their

1 litigation.” *Campbell v. City of Los Angeles*, 903 F.3d 1090, 1114 (9th Cir. 2018). “[W]orkers
2 may join a collective action if they claim a violation of the FLSA, are ‘similarly situated’ to the
3 original plaintiff, and affirmatively opt in.” *Id.* at 1108. Here, as discussed above all members of
4 the Settlement Class share an identical issue of law and fact that is dispositive of their FLSA claim.

5 Based on the foregoing, the Court conditionally certifies the class and provisionally
6 appoints Hayes Pawlenko LLP as Class Counsel and Plaintiff Massey as class representative.

7 III. PLAN OF NOTICE, ALLOCATION, AND ADMINISTRATION

8 A. Notice Plan

9 A court must “direct notice [of a proposed class settlement] in a reasonable manner to all
10 class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). “The class must be
11 notified of a proposed settlement in a manner that does not systematically leave any group without
12 notice.” *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 624 (9th Cir. 1982). Adequate
13 notice requires: (i) the best notice practicable; (ii) reasonably calculated, under the circumstances, to
14 apprise the Class members of the proposed settlement and of their right to object or to exclude
15 themselves as provided in the settlement agreement; (iii) reasonable and constitute due, adequate,
16 and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable
17 requirements of due process and any other applicable requirements under federal law. *Phillips*
18 *Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Due process requires “notice reasonably
19 calculated, under all the circumstances, to apprise interested parties of the pendency of the action
20 and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr.*
21 *Co.*, 339 U.S. 306, 314 (1950).

22 The parties’ proposed notice plan appears to be constitutionally sound in that Plaintiff has
23 made a sufficient showing that it is: (i) the best notice practicable; (ii) reasonably calculated, under
24 the circumstances, to apprise the Class members of the proposed settlement and of their right to
25 object or to exclude themselves as provided in the settlement agreement; (iii) reasonable and

1 constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meet
2 all applicable requirements of due process and any other applicable requirements under federal law.

3 The Court approves form of the long-form Notice of Proposed Class Action Settlement,
4 subject to the minor, non-substantive changes to the Notice discussed during the hearing. All
5 members of the Settlement Class will be sent, via First Class Mail, a written notice of settlement.
6 The Court finds that this notice is sufficient to inform Class members of the terms of the Settlement
7 Agreement, their rights under the Settlement Agreement, their rights to object to or comment on the
8 Settlement Agreement, their right to receive a payment or opt out of the Settlement Agreement, the
9 process for doing so, and the date and location of the Fairness and Final Approval hearing. The
10 forms of plan of notice are therefore **APPROVED**.

11 **B. Plan of Allocation**

12 The Court preliminarily approves the proposed plan of allocation set forth in the Motion
13 and the class notices.

14 The Settlement Agreement provides that participating class members will be eligible to
15 recover their respective settlement share in two checks. As compensation for the state law class
16 claims, one check consisting of ninety-five percent (95%) of an individual's share will automatically
17 be sent to all participating class members without the need for returning a claim. To receive the
18 remaining five percent (5%) share for the FLSA claim, participating class members must timely
19 return an FLSA Opt-In-Form which is included in the Notice Packet. If there are members of the
20 settlement who do not opt-in to the FLSA claim, their share of the funds will be re-allocated, pro rata
21 based on weeks worked within the class period to those who opted in.

22 **C. Settlement Administrator**

23 CPT Group is appointed to act as the Settlement Administrator, pursuant to the terms set
24 forth in the Settlement Agreement. The parties selected CPT Group because it submitted the
25 lowest bid. CPT Group has agreed to administer the Settlement for a flat fee of \$10,500.00.

1 The Settlement Administrator shall distribute the Class Notice according to the notice plan
2 described in the Settlement Agreement and substantially in the form approved herein, no later than
3 thirty (30) days after the Court enters preliminary approval of settlement (“Notice Date”). Proof of
4 distribution of the Class Notice shall be filed by the parties in conjunction with the motion for final
5 approval.

6 The Settlement Agreement provides that Star Nursing is directed to provide to the
7 Settlement Administrator the Class members’ contact data as specified by the Settlement
8 Agreement no later than fourteen (14) calendar days after the Court enters preliminary approval of
9 the settlement.

10 **D. Exclusion/Opt-Out**

11 Any class member shall have the right to be excluded from the class by mailing a request
12 for exclusion using the Exclusion Form in the Notice Packet to the Settlement Administrator
13 postmarked no later than sixty (60) days from the “Class Mailing Date.” Requests for exclusion
14 must: (i) include the name and address of the person who wishes to be excluded; (ii) include the
15 last four digits of the individual’s social security number; and (iii) be signed by the class member
16 seeking exclusion. No later than **Thursday, February 16, 2023**, Class Counsel shall file with the
17 Court a list of all persons who have timely requested exclusion from the Class as provided in the
18 Settlement Agreement.

19 Any class member who does not timely request exclusion from the settlement class as
20 provided above shall be bound by the terms and provisions of the Settlement Agreement upon its
21 final approval, including but not limited to the releases, waivers, and covenants described in the
22 Settlement Agreement, whether or not such person objected to the Settlement Agreement, and
23 whether or not such person makes a claim upon the settlement funds.

24 **E. Objections**

25 Any class member who has not submitted a timely request for exclusion from the
26 Settlement Agreement shall have the right to object to (1) the Settlement Agreement, (2) the plan of

1 allocation; and/or Class Counsel's motion for attorneys' fees and Class Representative award by
2 mailing to the Settlement Administrator a written objection and stating whether they intend to
3 appear at the Fairness Hearing, as set forth in the Class Notice, no later than sixty (60) days after
4 the class mailing date. Failure to submit a timely written objection will preclude consideration of
5 the class member's later objection at the time of the Fairness Hearing.

6 **F. Attorneys' Fees and Class Representative Awards**

7 Plaintiff Massey and their counsel shall file their motion for attorneys' fees and for Class
8 Representative award no later than **Monday, December 19, 2022**. Each settlement class member
9 shall have the right to object to the motion for attorneys' fees and Class Representative award by
10 filing a written objection with the Court no later than sixty (60) days after the class mailing date, as
11 stated in paragraph 8 above.

12 Plaintiff shall file a reply brief responding to any timely objection no later than **Monday,**
13 **February 6, 2023.**

14 **G. Fairness and Final Approval Hearing**

15 All briefs, memoranda and papers in support of final approval of the settlement shall be
16 filed no later than **Monday, December 19, 2022**.

17 The Court will conduct a Fairness and Final Approval Hearing on **Thursday, February 23,**
18 **at 9:00 a.m.**, to determine whether the Settlement Agreement should be granted final approval as
19 fair, reasonable, and adequate as to the Class. The Court will hear all evidence and argument
20 necessary to evaluate the Settlement Agreement and will consider Class Counsel's motion for
21 attorneys' fees and for Class Representative award.

22 Class members may appear, by counsel or on their own behalf, to be heard in support of or
23 opposition to the Settlement Agreement and Class Counsel's Motion for attorneys' fees and Class
24 Representative award by filing a Notice of Intention to Appear no later than **Thursday, February**
25 **9, 2023.**

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1 The Court reserves the right to continue the date of the final approval hearing without
 2 further notice to Class members.

3 The Court retains jurisdiction to consider all further applications arising out of or in
 4 connection with the Settlement.

5 **H. Post-Distribution Accounting**

6 If final approval is granted, the parties will be required to file a Post-Distribution
 7 Accounting in accordance with this District's Procedural Guidance for Class Action Settlements
 8 and at a date set by the Court at the time of the final approval hearing. Counsel should prepare
 9 accordingly.

Summary of Key Dates	
Event	Date
Class data to be provided to Settlement Administrator	November 7, 2022
Class Notice to be sent by	November 23, 2022
Class Counsel to file their motion for attorneys' fees and costs and Class Representative awards	December 19, 2022
Motion for Final Approval to be filed by	December 19, 2022
Postmark deadline to submit objection or request for exclusion	January 23, 2023
Class counsel and settlement administrator to submit supplemental statements regarding status of notice program, objections, opt-outs	February 9, 2023
Fairness and Final Approval Hearing NOTE: Subject to change without further notice to the Class.	February 23, 2023 at 9:00 a.m.

22 **IT IS SO ORDERED.**

23 Dated: October 24, 2022



24
 25 EDWARD J. DAVILA
 26 United States District Judge

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